Supreme Court, U.S.
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No. 82-875

In the Supreme Court of the United States

OCTOBER TERM, 1982

THE IRISH PEOPLE, INC., PETITIONER

v.

ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioner, a corporation, contends that the district court lacked personal jurisdiction over it, thus barring the government's enforcement action.

On August 16, 1976, pursuant to the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 *et seq.*, the Attorney General filed a complaint that sought to compel petitioner to register as a foreign agent. Petitioner denied that it was an agent of a foreign principal and asserted various defenses, including a claim of selective prosecution (Pet. App. 3-4). In connection with that claim, petitioner sought production of various documents. The district court found that the requested documents were privileged as state secrets (*id.* at 4, 77-83), but it later dismissed the complaint on petitioner's motion on the ground that the withheld documents bore on petitioner's selective prosecution defense

and thus deprived petitioner of an opportunity to present that defense (*id.* at 5, 94-107).[1]

On the government's appeal, the court of appeals reversed and reinstated the complaint (Pet. App. 1-58). Judge Wilkey was of the view that petitioner's selective prosecution claim was groundless and that in any event dismissal was not warranted (*id.* at 1-54). Judge Wald concurred.[2] She considered the documents at issue to bear only tangentially on petitioner's selective prosecution claim and therefore concluded that they would not support dismissal (*id.* at 56-58). In a footnote (*id.* at 6 n.9), the court agreed with the district court that petitioner had sufficient contacts with the district to support the lower court's assertion of personal jurisdiction over petitioner.

Petitioner contends that in personam jurisdiction was lacking because its only contacts with the District of Columbia involved petitioner's circulation in the District of some 50 copies of its newspaper. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision did not finally dispose of the issue of petitioner's obligation to register or even petitioner's selective prosecution claim, but rather merely reinstated the government's complaint and remanded for further consideration by the district court. Petitioner may yet prevail on this claim or on its other defenses to the complaint. If so, petitioner's present contention will be of no further importance. If, on the other hand,

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[1]Earlier, the district court had ruled that petitioner's business had sufficient contacts in the district to enable the court to assert jurisdiction over petitioner (Pet. App. 59-74).

[2]Judge Wald and Senior Judge Bazelon concurred in all but Part IIA of Judge Wilkey's opinion. Senior Judge Bazelon also concurred in Judge Wald's opinion. Judge Wald's opinion and Judge Wilkey's opinion, except for Part IIA, constitute the opinion of the court. Pet. App. 2.

the district court renders judgment in favor of the government and the court of appeals affirms, petitioner then will be able to present its contentions to this Court, together with any other claims it may have, in a petition for a writ of certiorari seeking review of a final judgment against it. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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[3]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests one.